



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

Minutes of the April 21, 2004 meeting of the  
Commission on Governmental Ethics and Election Practices  
held in the Commission's Meeting Room,  
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Andrew Ketterer; Hon. James O. Donnelly; Hon. Terrence MacTaggart;  
Hon. A. Mavourneen Thompson. Staff: Executive Director Jonathan Wayne;  
Counsel Phyllis Gardiner; Lobbyist Registrar Diana True.

At 10:05 a.m., Chair Ketterer convened the meeting. The Commission considered the  
following items:

The Chair welcomed the new Commission Member Mavourneen Thompson.

Agenda Item #1 – Ratification of Minutes of March 10, 2004 Meeting

Mr. Donnelly moved, Dr. MacTaggart seconded, and the members voted unanimously to  
adopt the draft minutes of the March 10, 2004 meeting.

Agenda Item #2 – Hon. Kevin Glynn

Representative Kevin Glynn described the Legislature's consideration of the major  
substantive rules proposed by the Commission, and some of the problems he saw as a  
member of the Legal and Veterans Affairs Committee and the Legislature. He stated that  
in 2002 the Commission's rules regarding pre-primary expenditures were changed during  
the election, and that 2004 candidates would appreciate receiving the Commission's  
current policies in writing in advance of the primary election.

Representative Glynn stated that the proposed rules appeared to be targeted toward  
traditionally financed candidates, and that they don't apply evenly to Maine Clean Election  
Act (MCEA) and traditional candidates with regard to pre-primary expenditures. If a  
MCEA candidate uses seed money and his or her primary election payment for general  
election expenditures, there is no penalty or negative consequence, but if a traditionally  
funded candidate makes the same types of expenditures, matching funds are triggered for  
the MCEA opponent.

Representative Glynn raised the issue of expenditures that must be incurred by  
traditionally financed candidates for fundraising events or solicitations. Some of these  
solicitations go to individuals outside the candidate's district. The monies raised through

these fundraising events and solicitations trigger matching funds, and there currently is no offset for the expenditures that were incurred in raising the funds. He believes that under the proposed rules that would be in effect for 2006, a Maine Clean Election Act candidate will have more funds to spend than his or her traditionally financed opponent.

The Commission Director commented that Rep. Glynn raised a very fair point, and that if a MCEA candidate uses seed money or primary election public funds for general election goods, those purchases should be taken into account when considering whether the MCEA candidate receives matching funds for the general election. He stated his belief that the Commission's Rules could be applied uniformly in 2006 so that pre-primary purchases would be treated the same way for MCEA candidates as for traditionally financed candidates.

The director noted that, as for 2004, there currently is an incentive for MCEA candidates to spend their seed money because unspent seed money is deducted from primary election payments. He stated that because many of these candidates do not have primary election opponents, many MCEA candidates probably have already spent a portion of their seed money on goods and services for the general election.

Ms. Thompson asked whether there was a presumption that the Commission Rules would not be applied equally to both MCEA and privately financed candidates. The director said that the rules are not explicit on this point, and that in his view the rules could be applied equally. Rep. Glynn stated that most MCEA candidates have not yet received their primary election payments, and that if the Commission's preference is that MCEA candidates should not spend their primary election funds for general election goods, the candidates should be notified of this in writing.

The Commission members reviewed a written letter that was submitted by House Democratic consultant Toby Guzowski.

Thomas Bradley of the Maine Citizen Leadership Fund stated that when pre-primary expenditures are made for the general election, those expenditures should be treated in the same fashion regardless whether the candidate is publicly or privately financed. He expressed his concern that Rep. Glynn's second proposal regarding deducting fundraising costs could open the door to a stream of campaign expenditures for solicitations and campaign events that would not trigger matching funds. Mr. Bradley stated that many events are voter contact/fundraising events, and that it would be hard for the Commission to distinguish fundraising events from campaign events.

The Commission director endorsed Rep. Glynn's suggestion that a memo be distributed to all candidates explaining the Commission's policy on pre-primary expenditures for the 2004 elections. He stated that a draft of such a memo had been included among the attachments to the agenda. He also recommended, as Rep. Glynn had suggested, that the memo include an added statement that if MCEA candidates do spend their primary election payment on general election goods and services, that spending could contribute to the filing of a complaint.

Mr. MacTaggart moved, Mr. Donnelly seconded, and the members voted unanimously that the staff send the draft memo to all candidates with the change described by the Commission director.

Agenda Item #3 – Hon. Sean Faircloth/Declaration of Intent Before Qualifying Contributions

Representative Sean Faircloth made a presentation by telephone on the Commission's speakerphone. He stated that on March 7 he sent an e-mail to the Commission director concerning an attached draft fundraising letter. In that e-mail, Rep. Faircloth stated that he wanted to be in 100% compliance with all ethical or legal parameters. On the next day, the Commission director made some comments on the letter, and Rep. Faircloth subsequently initiated fundraising by sending the letter to supporters. Rep. Faircloth stated that pursuant to 21-A M.R.S.A. 1125(1), his e-mail was a declaration of intent that he intended to run as a Maine Clean Election Act candidate, and that he met the criteria of the statute. The e-mail also substantively complied with the Chapter 3, Section 3(2) of the Commission Rules, and that even though he did not fill out the form, Rep. Faircloth's intention was clear.

Rep. Faircloth noted that in the case of Philip Dawson, the Commission waived both the statute and relevant Commission Rule in order to permit Mr. Dawson to participate in the Maine Clean Election Act. Rep. Faircloth stated that in his case, there is a stronger argument for granting a waiver because of his March 7 notice that he intended to run as a MCEA candidate. He argued that the Commission has the power to certify him as a MCEA candidate, and his certification is consistent with the agency's mission.

Ms. Thompson stated that she appreciated Representative Faircloth's presentation and the time requirements on a Representative who is a member of the Appropriations Committee. She asked Rep. Faircloth how much time did he have to go back to contributors and get replacement checks after learning about the Declaration of Intent requirement. Rep. Faircloth stated that he tried to get substitute checks, but he was not successful.

Phyllis Gardiner noted that in the case of Philip Dawson (a candidate in the 2002 special election), the former Commission director made an administrative decision after consulting with the former Commission Chair to permit Mr. Dawson to amend the date on his Declaration of Intent because the candidate had begun openly campaigning as a Maine Clean Election Act candidate at an earlier date. She mentioned the 2002 case of David Tobin who signed a different form, the Declaration of Intent Concerning Voluntary Expenditure Limits. In that case, the Commission decided that because the candidate had made a *bona fide* effort to comply with the statute by filing a form in which he declared his intention to run as a MCEA candidate, they would accept the spending limits form as the functional equivalent of filing the Declaration of Intent. She also described the matter of Raymond Pineau, in which the Commission considered whether it had the statutory authority to waive the Declaration of Intent requirement. It declined to certify Mr. Pineau as a Maine Clean Election Act candidate.

Mr. Donnelly asked why the Commission should bother requiring the Declaration of Intent if the Commission is not going to require all candidates to file it. He stated that if the reason to require the form is so that a candidate will know whether their opponent is participating in the MCEA by a certain date, then there may be a reason to require the

form. He proposed that if the Commission is not going to hold candidates to filing the Declaration of Intent, the Commission should recommend eliminating the form.

Chair Ketterer asked whether the Commission is statutorily authorized to waive the requirement that the Declaration of Intent be filed before qualifying contributions are accepted. Ms. Gardiner said that no waiver is provided for in the statutes.

The Commission director noted that the Commission's rule does specify the affirmations that must be included in the Declaration of Intent, and that the document is supposed to be notarized and retained in a public file so that other candidates can review it. It is relevant that Rep. Faircloth is an experienced state and federal candidate, an attorney, and that he participated in the MCEA in 2002.

Rep. Faircloth made a rebuttal statement reiterating his earlier presentation.

Ms. Thompson moved that Rep. Faircloth's March 7 e-mail be considered the equivalent of a Declaration of Intent. Dr. MacTaggart seconded the motion. Mr. Donnelly asked whether the Maine Clean Election Act or Commission Rules authorize the waiver of a requirement that a form be filed. Ms. Gardiner responded in the negative.

Dr. MacTaggart said that he accepted the argument that Rep. Faircloth's March 7 e-mail be considered the equivalent of the form, and that Rep. Faircloth acted in good faith. Chair Ketterer stated that he did not believe that the Commission had the legal authority to waive the Declaration of Intent requirement, and that there didn't appear to be any justification in law to grant the requested relief, although there may be some justification in equity. He said that the requested relief appeared to be a substantial deviation from how the Commission acted in the Pineau matter which was similar. Dr. MacTaggart and Ms. Thompson voted in favor of the motion, and Mr. Ketterer and Mr. Donnelly voted against the motion, so the request for relief was denied.

After discussing the procedural posture of the case, Chair Ketterer requested that the staff issue a determination denying Rep. Faircloth's request for certification, and stated that Rep. Faircloth would have a right to appeal the staff determination at the Commission's May 12 meeting.

Agenda Item #4 - Expenditures and Debt in Excess of Seed Money Collected – Rep. Robert Berube

Representative Robert Berube, a candidate for re-election to the House, has requested certification as a Maine Clean Election Act candidate. He collected \$500, and reported expenditures and debts toward the purchase of signs totaling \$921.83. Representative Berube made a presentation to the Commission members in which he explained the circumstances of the purchase of the signs. He stated that he did not intend to circumvent any of the Maine Clean Election Act requirements. Mr. Donnelly moved, Ms. Thompson seconded, and the Commission members voted unanimously (3-0; Dr. MacTaggart having had to excuse himself for the duration of the meeting) to grant the candidate a waiver of the seed money requirements.

Agenda Item #5 - Expenditures and Debt in Excess of Seed Money Collected – George Jacobson

George Jacobson, a candidate for the Senate, raised \$1,500 in seed money and made payments of \$1,418.90. In addition, he reported an outstanding liability to his campaign manager in the amount of \$600. His total payments and debt exceeded the seed money he collected. Mr. Donnelly moved, Ms. Thompson seconded, and the Commission members voted unanimously to grant the candidate a waiver of the seed money requirements.

Agenda Item #6 - Seed Money Contributions in Excess of \$500 – Linda Petrie  
House candidate Linda Petrie's husband temporarily assumed the responsibilities of treasurer, because the campaign's treasurer was out of town due to her husband's emergency surgery. The candidate's husband deposited \$540 in contributions, which exceeded the maximum \$500 maximum for seed money. When he learned of his mistake, he returned \$40 to a contributor. Mr. Donnelly moved, Ms. Thompson seconded, and the Commission members voted unanimously to grant the candidate a waiver of the seed money requirements.

Agenda Item #7 - Seed Money Contributions in Excess of \$500 -- Timothy Carter  
Timothy Carter, a candidate for the House, raised \$535 in seed money contributions by e-mailing several friends across the country. He received a check for \$100 from his friend Wayne Thurston in Las Vegas, Nevada. He states that he wished to accept only \$65 of the contribution, so he cashed the \$100 check and returned \$35 to the contributor. The deposit of the contribution technically caused his accepted contributions to exceed \$500. Mr. Donnelly moved, Ms. Thompson seconded, and the Commission members voted unanimously to grant the candidate a waiver of the seed money requirements.

Agenda Item #8 - Seed Money Contributions in Excess of \$500 – Rep. Jeffrey Kaelin  
Rep. Jeffrey Kaelin, a first-time participant in the Maine Clean Election Act, unintentionally made expenditures that exceeded the \$500 maximum by \$12.31. He has met the other eligibility requirements to be certified as a Maine Clean Election Act candidate. Mr. Donnelly moved, Ms. Thompson seconded, and the Commission members voted unanimously to grant the candidate a waiver of the seed money requirements.

Agenda Item #9 - Acceptance of Seed Money Contribution from Source Other than an Individual – Don Pilon  
Candidates wishing to become eligible for Maine Clean Election Act funding may collect seed money contributions only from individuals. Unaware of this restriction, candidate Don Pilon accepted a seed money contribution from the campaign account of Representative David Lemoine. Once the Commission staff informed Mr. Pilon of the error, he returned the funds to Rep. Lemoine's campaign and accepted a replacement contribution from Rep. Lemoine's personal funds. Mr. Donnelly moved, Ms. Thompson seconded, and the Commission members voted unanimously to grant the candidate a waiver of the seed money requirements.

#### Other Seed Money Waiver Issues

The Commission director noted that some additional candidates unintentionally failed to comply with the seed money requirements and have requested waivers. Mr. Donnelly moved, Ms. Thompson seconded, and the Commission members voted unanimously to grant waivers of the seed money requirements and to certify Clare Hudson Payne, Kimberly Brackett, Kenneth Fredette, Kenneth Lindall, and Charlotte E. Martin-Berry as Maine Clean Election Act candidates.

#### Agenda Item #10 – Recommendation of Adoption of Final Rules

The Commission members agreed to table consideration of this item until a later meeting.

#### Agenda Item #11 – Penalty Determination: Naomi Schalit

Naomi Schalit filed her monthly lobbyist report three days late on March 18, 2004. The Commission members considered a letter from Ms. Schalit requesting a reduction of the statutory penalty of \$100. The staff recommended a penalty of \$50, which reflected a 50% reduction because Ms. Schalit had not previously been late in filing a monthly report. Mr. Donnelly moved, Ms. Thompson seconded, and the members voted unanimously to adopt the staff recommendation of a \$50 penalty.

#### Agenda Item #12 – Penalty Determination: Karen Brown-Mohr

Karen Brown-Mohr filed her monthly lobbyist reports for three employers one day late on March 16, 2004. The Commission members considered a letter from the lobbyist in which she stated that she had been delayed in filing her reports because her father had been involved in a car accident and she traveled immediately to Florida. Mr. Donnelly moved, Ms. Thompson seconded, and the members voted unanimously to find Ms. Brown-Mohr in violation and to waive any monetary penalty.

The Commission members recognized the very hard work of the Commission staff – particularly staff auditor Andrew Seaman – in processing the requests for certification filed by candidates participating in the Maine Clean Election Act.

Dated: May \_\_\_, 2004

Respectfully submitted,

Jonathan Wayne  
Executive Director